

# When is employee insubordination protected?

**Issue:** If an employee believes a boss's order is illegal, she can refuse to do it. And you can't punish her for that defiance.

**Risk:** You could run afoul of federal or state anti-retaliation laws, which grant special rights to whistle-blowers.

**Action:** Make supervisors aware of this risk. Ask them to notify HR when employees object to directions for legal reasons.

If employees refuse to carry out orders, supervisors may automatically think such insubordination is worthy of instant discipline or firing.

Stop, and count to 10! That initial punish- the-employee response may be dead wrong and legally dangerous.

Why? If employees have a reasonable, good-faith belief that what they're being asked to do is illegal, they can refuse to follow through on the directive, and supervisors can't retaliate against the employee for taking that stand.

That's why it's important to train supervisors to ask questions when employees balk at orders or question their appropriateness. Don't jump right into discipline mode.

By asking employees why they're refusing an instruction, supervisors (or you) can discover if employees believe they're being asked to do something illegal. If the in-struction is perfectly legal, supervisors can explain why and persuade the person to carry out the order.

Either way, supervisors should notify HR when employees object to instructions for reasons that could raise legal risks.

**Case in point:** Elysa Yanowitz, a L'Oreal regional sales manager, was ordered by her boss to fire a female sales rep and replace her with someone who was "hot." Yanowitz refused and asked her boss for better justification, but he said nothing.

Yanowitz then fell under her boss's increased scrutiny and earned her first bad performance review in 17 years. She soon quit and sued for retaliation under California's job-bias law, which is similar to federal anti-discrimination law.

The California Supreme Court sent the case to trial, saying employers can be held liable for punishing employees who refuse to follow what they believe are illegal orders. Because Yanowitz had a good-faith belief that she was asked to do something illegal, whether it was true or not, she can pursue a retaliation lawsuit. (Yanowitz v. L'Oreal USA, Cal. S. Ct., No. S115154)